IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 3352 OF 2007

Harshad Subhash Shah & Anr. .... Petitioners

Vs.

Harishchandra Jagjivandas Shah & Ors. .... Respondents

Shri V.Z. Kankaria for the Petitioners

CORAM : A.S. OKA, J.
DATE : 9TH JULY, 2007

P.C.

1) Heard Shri Kankaria, the learned Advocate for the Petitioners. The challenge in this Writ Petition under Article 227 of the Constitution of India is to the order dated 28th February 2007 passed by the learned Ad-hoc Additional Sessions Judge-I, Nashik. The present petitioners are original fifth and sixth defendants. The suit was filed by the first Respondent for perpetual injunction restraining the defendants therein from obstructing the first Respondent in the repair work as well as to the possession of first Respondent over the suit property being structure on the ground floor admeasuring 10 ft. x 15 ft. An application for temporary injunction was made by the first Respondent in the said suit. The said

application was rejected by the Trial Court. Being aggrieved by the rejection of the said application, the first Respondent preferred an appeal before the District Court in which the impugned order has been passed.

2) Shri Kankaria, learned Advocate appearing for the Petitioners pointed out that an application has been made by the first Respondent at Exhibit 46 before the Trial Court in which the first Respondent has alleged that the petitioners have completely demolished the suit structure. It is pointed out that the said application is pending in which a prayer has been made for permitting the first Respondent to construct a tin shed. Shri Kankaria submitted that in fact the demolition work has been carried out by the local authority.

3) Thus as of today, it appears that the suit structure is completely demolished as reflected from the Application at Exhibit 46. The grievance made by the learned Advocate appearing for the Petitioners is as regards observations made by the Appellate Court in Paragraph no. 20 of the impugned judgment and order. He submitted that the said observations are completely erroneous.

4) It must be borne in mind that the Appellate Court was dealing with an appeal under Clause (r) of Rule 1 of Order XLIII of The Code of Civil Procedure, 1908. The Appellate Court was dealing with a limited question whether a case is made out for a grant of interim injunction. It is obvious that all the findings recorded by the Appellate Court including the findings recorded in Paragraph 20 are only tentative findings which will not be binding on the Trial Court at the time of final hearing of the suit and the suit will be decided by the trial Court without being influenced by the said findings.

5) In view of the above discussion, it is not necessary to entertain the Writ Petition. It is clarified that all contentions of the petitioners on application at Exhibit 46 made by the first Respondent are expressly kept open and it will be open for the Petitioners to contest the said application on all permissible grounds notwithstanding the observations made by the Appellate Court in the impugned order.

6) Subject to what is observed earlier, the Writ Petition is rejected.

(A.S. OKA, J.)